

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC,     )  
for a certificate of public good, pursuant to 30 V.S.A.     )  
Section 248, authorizing the construction and operation     )  
of a 5-wind turbine electric generation facility, with     )  
associated electric and interconnection facilities, on     )  
Georgia Mountain in the Towns of Milton and Georgia,     )  
Vermont, to be known as the "Georgia Mountain     )  
Community Wind Project"     )

Order entered: 9/14/2009

**ORDER RE: SCHEDULE AND MOTIONS TO COMPEL AND ENLARGE SCHEDULE**

**I. INTRODUCTION**

On September 1, 2009, Daniel and Tina FitzGerald filed a request that the Public Service Board ("Board") enlarge the schedule in this Docket by 60 days and that the Board direct Georgia Mountain Community Wind, LLC ("GMCW" or "Petitioner") to respond to questions promulgated by the FitzGeralds in discovery. On the same date, Jane FitzGerald also filed a motion to enlarge the schedule in the Docket by 60 days.

On September 3, 2009, the Board issued a memorandum denying the motion to compel and the requests to extend the schedule by 60 days; however, the Board granted a two-week extension for the Non-Petitioners to submit prefiled testimony. The September 3 memorandum stated that an order providing additional detail of the Board's ruling would follow.

This Order explains the Board's September 3 ruling.

**II. POSITIONS OF PARTIES**

On September 1, 2009, Daniel and Tina FitzGerald filed a motion to compel discovery responses. They also requested 60 days to file their prefiled testimony from the date that the Petitioner responds to their discovery request. The FitzGeralds further requested a 60-day stay in this proceeding until the Petitioner conducts an additional bat and bird survey and a noise assessment closer to their home.

On September 1, 2009, Jane FitzGerald filed a motion for an enlargement of time of 60 days to submit prefiled testimony and for adjustment of all future dates in the schedule

accordingly. Jane FitzGerald also requested that an additional round of discovery be incorporated into the schedule after the second site visit<sup>1</sup> to address any questions that may arise as a result. Ms. FitzGerald represents that the following parties join the motion: Daniel and Tina FitzGerald; George and Kenneth Wimble; Kevin and Cindy Cook; Scott and Melodie McLane; Kenneth and Virginia Mongeon; and Matt and Kimberly Parisi.

ANR proposed a two-week extension for Non-Petitioners to file direct testimony and an adjusted schedule for the remainder of the proceeding. Its proposal does not adjust the technical hearing dates, currently scheduled for the week of February 1, 2010. In its filing, ANR indicated that the Petitioner's counsel advised ANR that the "Petitioner does not support any extension for the reasons stated in its response filed today, but that the Petitioner could meet the proposed schedule changes proposed by the Agency [of Natural Resources]."

The Vermont Department of Public Service ("Department") objected to the requests for a 60-day extension because the motions do not meet the legal standard that would allow for granting of the relief sought. Additionally, the Department stated that Daniel and Tina FitzGerald's motion to compel should be denied because they did not show that they attempted to resolve the issue prior to filing the motion. The Department expressed its support for an enlargement of the schedule by two weeks as proposed by the Vermont Agency of Natural Resources ("ANR").

GMCW filed a letter objecting to the motions. GMCW contends that the motion to compel fails to meet the requirements of the Vermont Rules of Civil Procedure and should be denied on that basis. GMCW further contends that there is insufficient basis to grant the request to enlarge the schedule and that any extensions or delays will prejudice GMCW.

### **III. DISCUSSION AND CONCLUSION**

#### **Motion to Compel**

Pursuant to Vermont Rule of Civil Procedure ("VRCP") 26(h), a party must make a good faith effort to resolve discovery disputes prior to filing a motion to compel, and the motion to compel must include an affidavit or certificate demonstrating such an effort. VRCP 26(h) also requires that the motion to compel include "a specific verbatim listing of each of the items of

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1. On August 26, 2009, the Board notified the parties in this docket that a second site visit would be scheduled.

discovery sought or opposed, and immediately following each specification shall set forth the reason why the item should be allowed or disallowed."

Here, Daniel and Tina FitzGerald did not address the sufficiency of GMCW's responses with GMCW or make any attempt to resolve the dispute prior to filing the motion to compel with the Board. Furthermore, the FitzGeralds' motion to compel does not include a listing of the specific questions that they consider to be insufficiently addressed by GMCW's responses. Although the FitzGeralds are not represented by an attorney, the Board has made clear that "even though we make accommodations to enable participation by non-attorneys, they are still required to adhere to all of the Board's Rules of Practice for appearing before the Board."<sup>2</sup> In addition, counsel for the Department represents that he "advised the FitzGeralds of the process they needed to undertake prior to seeking a motion to compel." Not only have the FitzGeralds failed to make good-faith efforts to resolve the dispute before presenting it to the Board, under the July 17 schedule, responses to the second round of discovery were due August 14, 2009, yet the FitzGeralds filed the motion to compel two and one-half weeks later, only days before the deadline for prefiled testimony.

For these reasons, we deny the FitzGeralds' motion to compel. However, if the FitzGeralds demonstrate that they have made a good faith effort to resolve the issue with GMCW, and they provide a motion with sufficient specificity as to the discovery responses in dispute, the Board will consider such a motion.

#### Motion for Enlargement of Time

We deny the motions for an enlargement of time of 60 days to submit prefiled testimony. Jane FitzGerald and Daniel and Tina FitzGerald have not demonstrated a sufficient basis for the 60-day extension. ANR proposed a revised schedule that does not alter the schedule for hearings, and therefore does not modify the timing of a decision in this Docket. ANR's proposed schedule provides an additional two weeks for Non-Petitioners to file direct testimony and also provides an additional two weeks for GMCW to file rebuttal testimony. Consequently, the revised schedule should not prejudice GMCW. We find ANR's proposed schedule to be reasonable and adopt the schedule, as set forth below.

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2. Docket 7508, Order of 7/2/09 at 2.

The technical hearings were originally scheduled for the week of February 1, 2010. The Board has decided to include a second week of technical hearings to ensure that there is sufficient flexibility in the schedule should additional hearing dates be necessary. Accordingly, parties should make certain that they and their witnesses are available for hearings during the weeks of February 1 and February 8, 2010.

The schedule is adjusted accordingly:

Non-Petitioners file direct testimony	September 18, 2009
First round of discovery served on Non-Petitioners	September 25, 2009
Non-Petitioners respond to first round of discovery	October 16, 2009
Second round of discovery on Non-Petitioners	October 23, 2009
Non-Petitioners respond to second round of discovery	November 6, 2009
Petitioners file rebuttal testimony	November 20, 2009
Discovery served on Petitioners' rebuttal testimony	December 1, 2009
Petitioner responds to discovery on its rebuttal testimony	December 15, 2009
Non-Petitioners file rebuttal testimony	January 4, 2010
Discovery served on Non-Petitioners' rebuttal testimony	January 11, 2010
Non-Petitioners respond to discovery on rebuttal testimony	January 25, 2010
Technical hearings	Weeks of February 1 and February 8, 2010

**SO ORDERED.**

Dated at Montpelier, Vermont, this 14<sup>th</sup> day of September, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: September 14, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*